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Attorneys for Defendants
CITY OF PETALUMA, OFFICER NICK McGOWAN
and SGT. JIM STEPHENSON

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID W. PIMENTEL,
Plaintiff,

v.

COUNTY OF SONOMA, CITY OF
PETALUMA, OFFICER McGOWAN, POLICE
SGT. STEPHENSON, and DOES 1-25,

Defendants.

Case No:

C08-02121

DEFENDANTS CITY OF PETALUMA,
OFFICER NICK McGOWAN AND SGT.
JIM STEPHENSON'S NOTICE OF
REMOVAL UNDER 28 U.S.C. § 1441(b)
(FEDERAL QUESTION)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT DEFENDANTS CITY OF PETALUMA, OFFICER
NICK McGOWAN and SGT. JIM STEPHENSON hereby remove to this Court the state court
action described below.

1. On February 27, 2008, an action was commenced in the Superior Court of the State
of California in for the County of Sonoma, entitled DAVID W. PIMENTEL, Plaintiff v. COUNTY
OF SONOMA, CITY OF PETALUMA, OFFICER McGOWAN, POLICE SGT. STEPHENSON,
and DOES 1-25, Defendants. It was assigned case number SCV242437. A copy of the Complaint
is attached hereto as Exhibit "A."

///

1 2. The first date upon which Defendants CITY OF PETALUMA, OFFICER NICK
2 McGOWAN and SGT. JIM STEPHENSON received a copy of the Complaint was March 28, 2008,
3 when Defendants CITY OF PETALUMA, OFFICER NICK McGOWAN and SGT. JIM
4 STEPHENSON were served with a copy of the Complaint and a Summons to the state court. A
5 copy of the Summons is attached hereto as Exhibit "B."

6 3. This action is a civil action of which this Court has original jurisdiction under 28
7 U.S.C. § 1331, and one which may be removed to this Court by Defendants pursuant to the
8 provisions of 28 U.S.C. § 1441(b) in that it arises under the Fourth Amendment of the United States
9 Constitution. Specifically, Plaintiff has alleged "a violation of plaintiff's 4th Amendment right to
10 be free from unreasonable seizure by persons acting under the color of the law" in the attached
11 Complaint.

12 4. The other Defendant who has been served with the Summons and Complaint has
13 joined in this Notice of Removal, as evidenced by the Joinder of Defendant COUNTY OF
14 SONOMA, filed concurrently herewith.

15
16 Dated: April 24, 2008

Respectfully Submitted,

MEYERS, NAVE, RIBACK, SILVER & WILSON

17
18
19 By: 

20 Clifford F. Campbell
21 Attorneys for Defendants
22 CITY OF PETALUMA, OFFICER NICK
23 McGOWAN and SGT. JIM STEPHENSON

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1081113_1.DOC

EXHIBIT A

COPY

PLD-PI-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David W. Pimentel 1192 Liberty Road Petaluma, CA 94952 TELEPHONE NO: 707 769-0127 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Pro Per		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, CA 94403 BRANCH NAME: Unlimited		
PLAINTIFF: David W. Pimentel DEFENDANT: County of Sonoma, City of Petaluma, et al Officer McGowan, Police SGT. Stephenson, Does 1-25 <input checked="" type="checkbox"/> DOES 1 TO 25		
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): Assault/Battery		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER:

1. Plaintiff (name or names): David W. Pimentel
 alleges causes of action against defendant (name or names):
 County of Sonoma, City of Petaluma, Officer McGowan, Police Sgt. Stephenson, Does 1-25
2. This pleading, including attachments and exhibits, consists of the following number of pages: 4
3. Each plaintiff named above is a competent adult
 - a. ☐ except plaintiff (name):
 - (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):
 - b. ☐ except plaintiff (name):
 - (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

PLD-PI-001

SHORT TITLE: Pimentel v. County of Sonoma, et al	CASE NUMBER:
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4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☒ a public entity (describe):
 County of Sonoma
 (5) ☐ other (specify):
- c. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- b. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☒ a public entity (describe):
 City of Petaluma
 (5) ☐ other (specify):
- d. ☐ except defendant (name):
 (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Doe defendants (specify Doe numbers): 1-15 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Doe defendants (specify Doe numbers): 16-25 are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. ☒ at least one defendant now resides in its jurisdictional area.
- b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
- d. ☐ other (specify):
9. ☒ Plaintiff is required to comply with a claims statute, and
- a. ☒ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

PLD-PI-001

SHORT TITLE: Pimentel v. County of Sonoma, et al	CASE NUMBER:
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10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☒ Other (specify):

Assault and Battery

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify):

Unknown at this time

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☒ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☒ in the amount of: \$ Unknown at this time

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: Feb. 26, 2008

David W. Pimentel

(TYPE OR PRINT NAME)

David Pimentel

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

PLD-PI-001(3)

SHORT TITLE:

Pimentel v. County of Sonoma, et al

CASE NUMBER

FIRST

(number)

CAUSE OF ACTION—Intentional Tort

Page 4

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): David W. Pimentel

alleges that defendant (name): County of Sonoma, City of Petaluma, Officer McGowan, et al

☒ Does 1 to 25

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff
 on (date) December 7, 2006
 at (place) Petaluma, CA

(description of reasons for liability):

On December 7, 2006, Plaintiff David W. Pimentel, was lawfully on the premises located at 4175 Bodega Avenue, Petaluma, CA. At said time and place, Plaintiff suffered from a medical emergency that prompted friends of plaintiff to call "911" for emergency medical aid. Ambulance attendants and members of the police department for the City of Petaluma and the Sonoma County Sheriff's Department arrived at the scene. At said time and place, Petaluma Police Sgt. Jim Stephenson directed N. McGowan, who was a deputy for the Sonoma County Sheriff's Department, to deploy a Taser onto plaintiff's person. While working in concert with Police Sgt. Stephenson, Officer McGowan then did commit an assault upon the flesh of plaintiff's person with a Taser and/or Stun gun, causing plaintiff to experience the punishment of severe pain and anguish. As Officer McGowan produced great and severe pain on the person of plaintiff, Petaluma Sgt. Stephenson coated plaintiff's face with pepper spray. Plaintiff was caused to experience an assault upon the groin area of his person when his testicles were Tasered and the pain inflicted was unreasonable and a violation of plaintiff's 4th Amendment right to be free from unreasonable seizure by persons acting under the color of law. The intentional acts of Police Sgt. Jim Stephenson and Sonoma County Sheriff Officer N. McGowan were committed while in the course and scope of employment and under the color of law for The City of Petaluma and the County of Sonoma.

Page 1 of 1

EXHIBIT B

COPY

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

COUNTY OF SONOMA, CITY OF PETALUMA, OFFICER MC
GOWAN, POLICE SGT. STEPHENSON, DOES 1-25

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
DAVID W. PIMENTEL

ENDORSED SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FEB 27 2008

SUPERIOR COURT
OF CALIFORNIA
COUNTY OF SONOMA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Sonoma County Superior Court, 600 Administration drive, Santa Rosa,
CA 94403

CASE NUMBER:
(Número del Caso)

30 242437

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
David W. Pimentel, 1192 Liberty Road, Petaluma, CA 94952, (707) 769-0127

DENISE L. GORDON

DATE: FEB 27 2008
(Fecha)

Clerk, by HAZEL EINARSSON, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Page 1 of 1

COPY

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Daid W. Pimentel 1192 Liberty Road Petaluma, CA 94952 TELEPHONE NO.: 707 769-0127 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): In Pro per		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa, CA 94403 BRANCH NAME: Unlimited		MAR 28 2008 City Clerk: City of Petaluma
PLAINTIFF/PETITIONER: David W. Pimentel DEFENDANT/RESPONDENT: County of Sonoma, City of Petaluma, et. al		CASE NUMBER: JCV212437
PROOF OF SERVICE OF SUMMONS		Ref. No. or File No.:

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. ☒ summons
 - b. ☒ complaint
 - c. ☒ Alternative Dispute Resolution (ADR) package
 - d. ☒ Civil Case Cover Sheet (served in complex cases only)
 - e. ☐ cross-complaint
 - f. ☒ other (specify documents): Notice, Assignment
3. a. Party served (specify name of party as shown on documents served):
 CITY OF PETALUMA Claire Cooper, CMC
- b. ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
4. Address where the party was served:
 11 English St, Petaluma, CA.
5. I served the party (check proper box)
 - a. ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 3-28-08 (2) at (time): 2:35pm
 - b. ☐ by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) ☐ (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
 - (5) ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

PROOF OF SERVICE OF SUMMONS

PLAINTIFF/PETITIONER: David W. Pimentel	CASE NUMBER:
DEFENDANT/RESPONDENT: County of Sonoma, City of Petaluma, et. al	

5. c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): (2) from (city):
- (3) ☐ with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. ☐ by other means (specify means of service and authorizing code section):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.
- b. ☐ as the person sued under the fictitious name of (specify):
- c. ☐ as occupant.
- d. ☒ On behalf of (specify):

under the following Code of Civil Procedure section:

- | | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input checked="" type="checkbox"/> 416.90 (authorized person) |
| <input checked="" type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

- a. Name: Floyd Sampson
- b. Address: 1080 Liberty Road, Petaluma, CA
- c. Telephone number: 707 778-7011
- d. The fee for service was: \$0.00

e. I am:

- (1) ☒ not a registered California process server.
- (2) ☐ exempt from registration under Business and Professions Code section 22350(b).
- (3) ☐ a registered California process server:
- (i) ☐ owner ☐ employee ☐ independent contractor.
- (ii) Registration No.:
- (iii) County:

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

3-28-2008
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

Floyd G. Sampson

Floyd G. Sampson
(SIGNATURE)